

HB 1136 - S COMM AMD

By Committee on Human Services & Corrections

ADOPTED 04/11/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature believes that electronic
4 monitoring, as an alternative to incarceration, is a proper and cost-
5 effective method of punishment and supervision for many criminal
6 offenders. The legislature further finds that advancements in
7 electronic monitoring technology have made the technology more common
8 and acceptable to criminal justice system personnel, policymakers, and
9 the general public.

10 In an effort to reduce prison and jail populations, many states
11 are increasing their utilization of electronic monitoring. However,
12 Washington state's use of electronic monitoring has been relatively
13 stagnate.

14 The intent of this act is to determine what electronic monitoring
15 policies and programs have been implemented in the other forty-nine
16 states, in order that Washington state can learn from the other states'
17 experiences.

18 NEW SECTION. **Sec. 2.** (1) The Washington association of sheriffs
19 and police chiefs shall conduct a comprehensive study on electronic
20 monitoring in every state. The study shall review and analyze each
21 state's activity regarding electronic monitoring. Specifically, the
22 study shall include:

- 23 (a) How often electronic monitoring is used;
24 (b) A description of laws and circumstances of when an offender is
25 placed on electronic monitoring;
26 (c) The discovery and analysis of specific programs used to promote
27 electronic monitoring and how they are operated;
28 (d) The type of electronic monitoring technology used;

1 (e) Evaluation of offender pay programs and the amount of money
2 recovered from these programs;

3 (f) Overall perceptions of electronic monitoring from the criminal
4 justice community, and any real or perceived problems or concerns with
5 electronic monitoring;

6 (g) Estimates on savings realized by utilizing electronic
7 monitoring.

8 (2) The findings and any recommendations from the study shall be
9 placed into a final report and presented to the legislature no later
10 than December 31, 2005.

11 **Sec. 3.** RCW 9.94A.737 and 2002 c 175 s 15 are each amended to read
12 as follows:

13 (1) If an offender violates any condition or requirement of
14 community custody, the department may transfer the offender to a more
15 restrictive confinement status to serve up to the remaining portion of
16 the sentence, less credit for any period actually spent in community
17 custody or in detention awaiting disposition of an alleged violation
18 and subject to the limitations of subsection (2) of this section.

19 (2)(a) For a sex offender sentenced to a term of community custody
20 under RCW 9.94A.670 who violates any condition of community custody,
21 the department may impose a sanction of up to sixty days' confinement
22 in a local correctional facility for each violation. If the department
23 imposes a sanction, the department shall submit within seventy-two
24 hours a report to the court and the prosecuting attorney outlining the
25 violation or violations and the sanctions imposed.

26 (b) For a sex offender sentenced to a term of community custody
27 under RCW 9.94A.710 who violates any condition of community custody
28 after having completed his or her maximum term of total confinement,
29 including time served on community custody in lieu of earned release,
30 the department may impose a sanction of up to sixty days in a local
31 correctional facility for each violation.

32 (c) For an offender sentenced to a term of community custody under
33 RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545,
34 for a crime committed on or after July 1, 2000, who violates any
35 condition of community custody after having completed his or her
36 maximum term of total confinement, including time served on community
37 custody in lieu of earned release, the department may impose a sanction

1 of up to sixty days in total confinement for each violation. The
2 department may impose sanctions such as work release, home detention
3 with electronic monitoring, work crew, community restitution, inpatient
4 treatment, daily reporting, curfew, educational or counseling sessions,
5 supervision enhanced through electronic monitoring, or any other
6 sanctions available in the community.

7 (d) For an offender sentenced to a term of community placement
8 under RCW 9.94A.705 who violates any condition of community placement
9 after having completed his or her maximum term of total confinement,
10 including time served on community custody in lieu of earned release,
11 the department may impose a sanction of up to sixty days in total
12 confinement for each violation. The department may impose sanctions
13 such as work release, home detention with electronic monitoring, work
14 crew, community restitution, inpatient treatment, daily reporting,
15 curfew, educational or counseling sessions, supervision enhanced
16 through electronic monitoring, or any other sanctions available in the
17 community.

18 (3) If an offender is accused of violating any condition or
19 requirement of community custody, he or she is entitled to a hearing
20 before the department prior to the imposition of sanctions. The
21 hearing shall be considered as offender disciplinary proceedings and
22 shall not be subject to chapter 34.05 RCW. The department shall
23 develop hearing procedures and a structure of graduated sanctions.

24 (4) The hearing procedures required under subsection (3) of this
25 section shall be developed by rule and include the following:

26 (a) Hearing officers shall report through a chain of command
27 separate from that of community corrections officers;

28 (b) The department shall provide the offender with written notice
29 of the violation, the evidence relied upon, and the reasons the
30 particular sanction was imposed. The notice shall include a statement
31 of the rights specified in this subsection, and the offender's right to
32 file a personal restraint petition under court rules after the final
33 decision of the department;

34 (c) The hearing shall be held unless waived by the offender, and
35 shall be electronically recorded. For offenders not in total
36 confinement, the hearing shall be held within fifteen working days, but
37 not less than twenty-four hours, after notice of the violation. For

1 offenders in total confinement, the hearing shall be held within five
2 working days, but not less than twenty-four hours, after notice of the
3 violation;

4 (d) The offender shall have the right to: (i) Be present at the
5 hearing; (ii) have the assistance of a person qualified to assist the
6 offender in the hearing, appointed by the hearing officer if the
7 offender has a language or communications barrier; (iii) testify or
8 remain silent; (iv) call witnesses and present documentary evidence;
9 and (v) question witnesses who appear and testify; and

10 (e) The sanction shall take effect if affirmed by the hearing
11 officer. Within seven days after the hearing officer's decision, the
12 offender may appeal the decision to a panel of three reviewing officers
13 designated by the secretary or by the secretary's designee. The
14 sanction shall be reversed or modified if a majority of the panel finds
15 that the sanction was not reasonably related to any of the following:
16 (i) The crime of conviction; (ii) the violation committed; (iii) the
17 offender's risk of reoffending; or (iv) the safety of the community.

18 (5) For purposes of this section, no finding of a violation of
19 conditions may be based on unconfirmed or unconfirmable allegations.

20 (6) The department shall work with the Washington association of
21 sheriffs and police chiefs to establish and operate an electronic
22 monitoring program for low-risk offenders who violate the terms of
23 their community custody. Between January 1, 2006, and December 31,
24 2006, the department shall endeavor to place at least one hundred low-
25 risk community custody violators on the electronic monitoring program
26 per day if there are at least that many low-risk offenders who qualify
27 for the electronic monitoring program.

28 (7) Local governments, their subdivisions and employees, the
29 department and its employees, and the Washington association of
30 sheriffs and police chiefs and its employees shall be immune from civil
31 liability for damages arising from incidents involving low-risk
32 offenders who are placed on electronic monitoring unless it is shown
33 that an employee acted with gross negligence or bad faith.

34 NEW SECTION. Sec. 4. This act expires December 31, 2005."

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1 On page 1, line 2 of the title, after "incarceration;" strike the
2 remainder of the title and insert "amending RCW 9.94A.737; creating new
3 sections; and providing an expiration date."

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